



Mr. Owen McLaughlin  
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Our reference: DFI/2020-0134

26 August 2020

Dear Mr. McLaughlin

You wrote to me on 15 July 2020 requesting an internal review of the handling of your Environmental Information Regulations 2004 (EIR) request for information. The request was regarding records held in relation to the Department's Service Agreement with Translink, and other Service Permit holders, for public passenger transport services in Northern Ireland, received in the Department on 12 June 2020. You had received a response on 06 July 2020, from Mr. Stuart Gilmore, DfI Public Transport Regulation, reference DFI/2020-0134.

An explanation of my role with regard to Internal Reviews and a summary of the correspondence are attached at **Annex A**.

I have examined the information relating to your request and completed my review. I can now inform you that, having reviewed the handling of your request, the Department did, on the whole, fulfil its obligation under the Environmental Information Regulations 2004. I would like to take this opportunity to explain my thinking.

The request for internal review focusses on the the Department's response to the following two of the three questions that you had submitted (I paraphrase the Department's response for both).

- 1) *A list of all the Express Services included within the Translink Service Agreement when the agreement was signed;*

The Department had advised that its *Public Service Agreement* [with Translink] provides for Translink to deliver the extensive public transport within Northern Ireland however it does not stipulate "Express Services" within it, and that the requested information could not be provided from what information the Department held.

- 3) *A list of all Express Services currently operating in Northern Ireland (both Translink & Commercial).*

The Department's response was that a list of all live Commercial Bus Service Permits is available on the Department's website at: <https://www.infrastructure-ni.gov.uk>

[ni.gov.uk/publications/current-list-commercial-bus-service-permits-northern-ireland](http://ni.gov.uk/publications/current-list-commercial-bus-service-permits-northern-ireland), constituting two currently operated Express Service permits (identified in the response).

Much of your request for an internal review request is centred on the interpretation of the legislation governing DfI's relationships - under the Service Agreement with Translink and under individual Commercial Bus Service Permits with other operators.

Your argument is that a greater quantity of information must be held by the Department, and should have been released. This is based upon an interpretation of the following statutes: [Regulation \(EC\) No 1370/2007](#), [The Transport Act \(Northern Ireland\) 2011](#), and [The Public Passenger Transport \(Service Agreements and Service Permits\) Regulations \(Northern Ireland\) 2015](#). The argument is that, with respect to the Service Agreement entered into in 2015, there is a "requirement under the legislation to describe the Services clearly and exactly".

In your request for an internal review, you stated that the Department's Service Agreement with Translink is "inexorably linked though both legislation and regulation" with Commercial Bus Service Permits and, from this, that there is a "legal, regulatory and contractual requirement for the Department to hold the information requested" about Express Services in relation to bus services delivered under its Service Agreement with Translink, because that detail is required for Service Permits.

My role with this internal review is not to argue legal points, outside of whether the Department has complied with the relevant information access legislation. However, in order to be able to determine whether the Department has handled your request correctly, it is important to clarify the requirements regarding information that the Department holds.

In this context, it is worth pointing out that the wording of Schedule 1 of The Public Passenger Transport (Service Agreements and Service Permits) Regulations (NI) 2015 outlines those "matters that **may** be dealt with in a service agreement"; while Regulation 5(3) makes clear that "an applicant for a service permit **must** provide such information as set out in Schedule 4".

The word "may" does not create an obligation. However, the word "must" does create an obligation. The wording contained within the Regulations, therefore, while it does clearly relate to both the overarching Service Agreement with Translink and Service Permits with individual commercial operators, does not create an equivalence between the two on what is required to be held.

In response to your original request, you were informed that, in relation to Translink, "the Public Service Agreement does not stipulate 'Express Services' within it", and that the term Express Service was only defined in the Departmental guidelines for individual [Commercial Bus Service Permits](#).

The Guidelines, developed by the Department in order to meet its statutory obligations, state that

"the Commercial Bus Service Permit system... enable the Department to issue Service Permits to licensed operators... provided they meet certain conditions, as set out in the 2011 Act, the 2015 Regulations and these Guidelines".

The detail about what constitutes Express Services, and the associated restrictions that have been placed upon operators are contained within these Guidelines rather than the legislation.

As a result, you were informed that it was not possible to provide the detailed list of Express Services that you required for Question 1, because the Service Agreement entered into with Translink did not stipulate, nor did it contain a list of, Express Services.

In relation to Question 3, where you had asked for a list of all current Express Services, because the Department would still not hold a list of Translink's Express Services, you were provided with details of the two relevant extant Commercial Bus Service Permits.

The 2015 Regulations do not require the Department to record details of the particular type of bus service that is being provided for each service delivered by Translink under the terms of its Service Agreement with the Department. Only where a Commercial Bus Service Permit has been applied for would the Department examine the requested level of detail for services being provided by Translink, as part of its consideration of the impact that any grant of a permit would be expected to have on Translink.

I am satisfied that the Department does not, in fact, hold the detail in relation to Translink's Express Services, that you had requested, both in relation to services identified in the original Service Agreement of 2015 and any currently operating. There was, prior to your request, no benefit to the Department in holding the information in the format that you expected, in relation to the Service Agreement and ongoing services. There is also not sufficient public interest, at this stage, to warrant the diversion of staff resources that would be required to provide the level of detail requested, by analysing the large number of services provided by Translink.

I appreciate that this is not the response that you will have wished for, but I hope you find this helpful. If you are dissatisfied with my findings, you have the right to appeal to the Information Commissioner and may do so by writing to him at the following address:

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

I am copying this letter to Mr. Gilmore as he provided you with the initial response.

Yours sincerely,

[Signed]

**PAUL MCGRORY**  
**Departmental Information Manager**

## **Annex A**

### **My role as Departmental Information Manager**

As Departmental Information Manager, my role in carrying out an 'Internal Review' following a complaint or 'appeal', is pursuant to the Secretary of State for Constitutional Affairs' Code of Practice [which now comes under the responsibility of the Secretary of State for the Department of Justice] on the discharge of public authorities' functions under Part 1 of the Freedom of Information Act 2000 and, by extension, the Environmental Information Regulations. Section 39 of the Code of Practice requires "a fair and thorough review of the handling issues and of decisions taken pursuant to the [Freedom of Information] Act, including decisions taken about where the public interest lies in respect of exempt information." Under the Environmental Information Regulations, this review of the handling of your request for information is a "reconsideration", a public authority obligation contained within Regulation 11 (Representations and Reconsideration). I have no role or locus with regards to any issues arising out of the substance of any information sought or the resolution of complaints, which may be the subject matter of the information.

### **Summary of correspondence**

#### **Request - 12 June 2020**

The Transport Act (NI) 2011 was enacted to allow for the introduction of regulated competition between public transport operators.

Further to the Act, in 2015, Translink was awarded exclusive rights through a Service Agreement to operate all of its public transport services. All Translink services covered by the Service Agreement were included within Schedule A of the agreement.

The Department also introduced the Commercial Bus Service Permit system. The Commercial Bus Service Permit system was introduced to enable the Department to issue Service Permits to licensed operators who wish to run public passenger transport services within Northern Ireland.

The Commercial Bus Service Permit systems included two distinct classes of service:

- a) Regular Stopping Service; and
- b) Express Service

The definition of an Express Service read "Each passenger journey must include a 'closed door' element, which is not less than 30 miles (taking the most direct route by road), during which passengers must not be picked up or set down. The reason for this condition is to prevent an Express Service undermining any existing Regular Stopping Service operating along the route."

I would like the Department to provide the following information:

- 4) A list of all the Express Services included within the Translink Service Agreement when the agreement was signed;
- 5) The total number of permits for Express Services issued by the Department under the Commercial Bus Service Permit system since its inception in October 2015; and

- 6) A list of all Express Services currently operating in Northern Ireland (both Translink & Commercial).

#### Response - 06 July 2020

Thank you for your email dated 12th June 2020 requesting, under the Freedom of Information Act, any information held by this office to include:

- 1) A list of all the Express Services included within the Translink Service Agreement when the agreement was signed;
- 2) The total number of permits for Express Services issued by the Department under the Commercial Bus Service Permit system since its inception in October 2015; and
- 3) A list of all Express Services currently operating in Northern Ireland (both Translink & Commercial).

In considering your request on behalf of the department I have determined that the information requested falls under the aegis of the Environmental Information Regulations 2004, as opposed to the FOI Act 2000.

A guide explaining the Environmental Information Regulations can be found at: <https://ico.org.uk/for-organisations/guide-to-the-environmental-information-regulations/what-are-the-eir/>.

In response to your request, I can confirm that:

- 1) The Public Service Agreement, put in place with Translink in 2015, was developed following the provisions of the Transport Act (Northern Ireland) 2011 which stipulated that "*the Department must... secure that most public passenger transport services continue to be provided by the Holding Company and its subsidiaries*". Recognising that requirement, the Public Service Agreement provides for Translink to deliver the extensive public transport within Northern Ireland however it does not stipulate "Express Services" within it and, therefore, we cannot provide this information. It is worth noting that Express Services are defined within the Commercial Bus Service Permit operator guidelines and do not apply to services provided under a service agreement.
- 2) There have been a total of six Commercial Bus Service Permits issued under the category of Express Service since October 2015.
- 3) A list of all live Commercial Bus Service Permits is available on the Department's website at: <https://www.infrastructure-ni.gov.uk/publications/current-list-commercial-bus-service-permits-northern-ireland>.

On this list there are two live Express Service permits operated as detailed below:

- i. EXS/005/2016 operated by Rooney International Coach Hire Ltd between Hilltown Square, Hilltown and Queens University, Belfast;
- ii. EXS/006/2016 operated by Yellow Line Coach Hire between Church Street, Rostrevor and University of Ulster, Jordanstown.

Internal Review request - 15 July 2020

Dear Department for Infrastructure (Northern Ireland),

Please pass this on to the person who conducts Freedom of Information reviews.

I am writing to request an internal review of Department for Infrastructure (Northern Ireland)'s handling of my FOI request 'Express Services in Northern Ireland'.

I requested 3 items of information:

- 1) A list of all the Express Services included within the Translink Service Agreement when the agreement was signed;
- 2) The total number of permits for Express Services issued by the Department under the Commercial Bus Service Permit system since its inception in October 2015; and
- 3) A list of all Express Services currently operating in Northern Ireland (both Translink & Commercial).

I would like a review of the responses provided to items 1 & 3 above.

- 1) A list of all the Express Services included within the Translink Service Agreement when the agreement was signed.

Your response to item 1 states “the Public Service Agreement provides for Translink to deliver the extensive public transport within Northern Ireland however it does not stipulate ‘Express Services’ within it and, therefore, we cannot provide this information. It is worth noting that Express Services are defined within the Commercial Bus Service Permit operator guidelines and do not apply to services provided under a service agreement.”

Both the Translink Service Agreement and Commercial Bus Service Permit scheme were introduced pursuant to Public Passenger Transport (Service Agreements and Service Permits) Regulations (Northern Ireland) 2015.

The Public Passenger Transport (Service Agreements and Service Permits) Regulations (Northern Ireland) 2015 were pursuant to the Transport Act (Northern Ireland) 2011 and Regulation (EC) No. 1370/2007.

The Service Agreement which the Department holds with Translink is therefore subject to both the Transport Act (Northern Ireland) 2011 and Regulation (EC) No. 1370/2007. The Department is required by the legislation to establish in advance and set out in an objective and transparent manner the nature and extent of any exclusive rights granted through any Service Agreement.

It is not possible for the Department to maintain that it had fulfilled this obligation prior to awarding Translink its exclusive rights through its public service contract while subsequently claiming that it does not hold any information as to the nature of the basic service category of services awarded through that same public service contract.

In Addition, section 2.1 of the ‘Service Agreement’ that the Department holds with Translink states that the Department granted Translink exclusive rights “to provide the public transport services specified in this Service Agreement”. The use of the word ‘specified’ clearly reflects the requirement under the legislation to



describe the Services clearly and exactly. The Service Agreement states that it is within Schedule A that these services are set out. As a minimum this will have required the broad service category to determine the basic nature of the Services and to understand whether they were 'Stage Carriage/Regular Stopping Service', routes covered, etc.

Again, it is not possible for the Department to maintain that services were 'specified' if it subsequently claims not to know the basic nature of the services included within the public service contract. By claiming not to hold the information requested, the Department is effectively stating that it awarded exclusive rights to 99%+ of all Northern Ireland's public transport network to a single operator without a basic understanding of the nature of the services it was awarding.

The Department, therefore, ought to hold the information requested and should make it available.

If only Stage Carriage/Regular Stopping Services and no Express Services were included within the public service contract the Department should provide clear confirmation of that within its response to this FOI request.

The above highlights the legal, regulatory and contractual requirement for the Department to hold the information requested. It is also worth noting the clear requirement for the Department to hold the information requested in order for it to effectively administer its own commercial bus service permit scheme.

The Public Passenger Transport (Service Agreements and Service Permits) Regulations came into operation on Monday, 5th October 2015 - the Department's Service Agreement with Translink was signed the next day: Tuesday, 6th October 2015. The Service Agreement and Service Permits are, therefore, inexorably linked both through legislation and regulation - the Department's attempt to separate the definition of Express Service seeks to ignore this fact.

Additionally, the Department's own Commercial Bus Service Permits Guidelines for Bus Operators contain many references explicitly referring to both 'Regular Stopping Service' and 'Express Service' as existing and defined service types. The guidelines also explicitly state that the 'Regular Stopping Service' category was formerly known as a 'Stage Carriage Service'.

It is clear therefore, that the 'Stage Carriage' and 'Express Service' categories both predate the Public Passenger Transport (Service Agreements and Service Permits) Regulations (Northern Ireland) 2015 and both terms were in common and regulatory use prior to the introduction of those regulations. For example, up until March 2015 the 'Stage Carriage' definition was used to determine a service's eligibility for Fuel Duty Rebate.

The guidelines go on to explicitly and repeatedly highlight that the issuing of any permit will be heavily dependent upon whether or not another operator, either through a Service Agreement or permit, operates a service of the same category along the route applied for.

It is clear that it would be impossible for the Department to independently determine whether or not Translink operated any 'Regular Stopping Services' or 'Express Services' within its Service Agreement unless the Department held a

record of the services included in the Service Agreement classed by service category.

References include but are not limited to:

Paragraph 3.2 states:

3.2 When making an application for a Service Permit under the Regular Stopping Service or Express Service categories (see section 4), an operator should take account of the existing service provision. Operators who currently provide these existing services are protected by what is known as “the 30-minute rule”, which is designed to prevent another operator from providing a service within 30 minutes of an existing service on the same route (unless that operator can demonstrate that a particular need for the new service exists). [Section 3.2 Commercial Bus Service Permits Guidelines for Bus Operators]

4.12 As with the Regular Stopping Service category, an application will not usually be granted on a route which is already being served unless the operator can (i) demonstrate that the proposed service is timetabled to depart at least either 30 minutes before or after an existing Express Service, or (ii) provide evidence that demand for such a service exists.

[Section 4.12 Commercial Bus Service Permits Guidelines for Bus Operators]

Therefore, in addition to the clear link through the relevant legislation and regulation, the Department’s own published guidelines explicitly state that there is a requirement for the Department to hold the information requested.

If only Stage Carriage/Regular Stopping Services and no Express Services were included within the public service contract the Department should provide clear confirmation of that within its response to this FOI request.

- 3) A list of all Express Services currently operating in Northern Ireland (both Translink & Commercial).

Your response to item 3 states “A list of all live Commercial Bus Service Permits is available on the Department’s website”

The FOI request explicitly asked for a current list of all Express Services both Translink and those provided by commercial operators. Your response simply provided reference to a list of all live Commercial Bus Service Permits only. I would ask the Department to supply a list all Express Services currently operated by Translink in Northern Ireland.

If Translink is not currently providing any Express Services within Northern Ireland the Department should provide clear confirmation of that within its response to this FOI request.